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500720—42——1

United States Court of Customs and Patent Appeals

No. 4419

THE UNITED STATES, APPELLANT

vs.

SCHENLEY IMPORT CORP., APPELLEE

PETITION FOR REVIEW

To the honorable the United States Court of Customs and Patent Appeals:

Your petitioner, being dissatisfied with the decision and judgment of the United States Customs Court in each of the matters referred to in the annexed Schedule A, respectfully prays your court to review the questions involved therein, and for such relief in the premises as to the court shall seem just. The particulars of the errors of law and fact involved in said decision and judgment with which your petitioner is dissatisfied are set forth in the annexed Assignment of Errors.

Dated, New York, N. Y., November 12, 1942.

THE UNITED STATES,
By PAUL P. RAO,
Paul P. Rao,
Assistant Attorney General, Attorney for Appellant,
201 Varick Street, New York, N. Y.

ASSIGNMENT OF ERRORS

The United States Customs Court has erred as follows:

1. In sustaining the protest and entering judgment for the importer.

2. In finding and holding in effect, for the reasons expressed in the case of *Rathjen Brothers* v. *United States*, decided July 1, 1942, C. D. 659, that the increased rate on distilled spirits (which term includes

rum) fixed by the Revenue Act of 1938, viz, $2.25 as of July 1, 1938, should not be held to apply to rum imported from and the product of Cuba which by the terms of a Trade Agreement with that country (T. D. 47232) was exempt from taxes in excess of the amount in effect on August 24, 1934, viz, $2.00 per proof gallon.

3. In finding and holding in effect, that the merchandise which was imported and entered for warehouse July 1, 1938, and entirely withdrawn on or before July 11, 1938, is subject to the Liquor Taxing Act of 1934 at $2.00 per proof gallon.

4. In not finding and holding that the merchandise which was imported and entered for warehouse July 1, 1938, and entirely withdrawn on or before July 11, 1938, is subject to assessment at $2.25 per proof gallon under section 600 (a) (4), as amended by section 710 of the Revenue Act of 1938 (52 Stat. 572).

5. In not finding and holding that section 710 of the Revenue Act of 1938, amending section 600 (a) (4) of the Revenue Act of 1938, being later in date than the Cuban Agreement of 1934 (T. D. 47232), superseded the conflicting provisions of the said earlier trade agreement.

6. In finding and holding in effect, for the reasons expressed in the *Rathjen* case, *supra*, that the provisions contained in the third and fifth paragraphs of Article III of the Supplementary Trade Agreement with Cuba of December 23, 1939 (T. D. 50050) was indicative of the intention of the parties to the Cuban Trade Agreement of 1934 and that both parties to said Supplementary Agreement recognized that under the terms of Article VIII of the Trade Agreement of 1934 the exclusive rates therein provided would not be subject to conflicting laws which might subsequently be enacted.

7. In not finding and holding that the amendment to Article VIII of the said agreement of 1934 contained in the Supplementary Trade Agreement of December 23, 1939 (T. D. 50050), evidenced a recognition by the contracting parties that section 600 (a) (4) of the Revenue Act of 1938, as amended by section 710 of the Revenue Act of 1938, had superseded the conflicting provisions contained in Article VIII of the original trade agreement, and that said amendment in said supplementary trade agreement was intended to give recognition to that operation.

8. In finding and holding in effect, for the reasons expressed in the *Rathjen* case, *supra*, that "The Analysis of General Provisions and Reciprocal Benefits in the Supplementary Trade Agreement with Cuba," issued by the Department of State on December 23, 1941, constituted any evidence as to the intent of Congress in enacting section 710 of the Revenue Act of 1938.

SCHEDULE A

Port: New York, N. Y.

Subject: Internal Revenue Tax (Recip. Treaty).

Decided: July 27, 1942. Rehearing denied September 15, 1942.

Protest No. 989463–G/5106; vessel, *Oriskany;* entry No. Bond 74; date of entry, July 1, 1938.

STATE OF NEW YORK,

City and County of New York, ss:

Mary Amico, being duly sworn, deposes and says that she is over the age of 18 years; that she is a messenger in the office of the Assistant Attorney General in charge of customs cases; that on the 12th day of November 1942 deponent served the within Petition for Review upon Puckhafer, Rode & Rode, attorneys for the appellee herein, by depositing a true copy thereof, properly inclosed in a securely closed and duly franked official wrapper of the United States Department of Justice, in a letter box duly maintained by the United States Government and under the care of the Post Office at New York City, addressed to said Puckhafer, Rode & Rode at No. 18 Bridge Street, New York, N. Y., that being the address designated by them for that purpose upon the preceding papers herein.

MARY AMICO.

Sworn to before me this 12th day of November 1942.

MARY K. MCQUADE,

Notary Public, N. Y. Co., No. 65, Reg. No. 3.

Commission expires March 30, 1943.

[Indorsed:] Filed Nov. 13, 1942. United States Court of Customs and Patent Appeals. Arthur B. Shelton, Clerk.

NOTICE OF APPEARANCE

NOVEMBER 14, 1942.

Mr. ARTHUR B. SHELTON, CLERK,

U. S. Court of Customs & Patent Appeals,

Washington, D. C.

SIR: Will you please enter our appearance as attorneys for the Appellee in Appeal No. 4419, *The United States, Appellant,* vs. *Schenley Import Corp., Appellee.*

Respectfully,

PUCKHAFER, RODE & RODE,

18 Bridge Street, New York.

[Indorsed:] Filed Nov. 16, 1942. United States Court of Customs and Patent Appeals. Arthur B. Shelton, Clerk.

RETURN TO COURT OF CUSTOMS AND PATENT APPEALS

UNITED STATES CUSTOMS COURT

Suit 4419

THE UNITED STATES, *Appellant*

v.

SCHENLEY IMPORT CORP., *Appellee*

The petitioner above named, having applied to the United States Court of Customs and Patent Appeals for a review of the questions of law and fact involved in a decision of the United States Customs Court in the above case, and the said Court having ordered this Court to transmit to said Court the record, evidence, exhibits, and samples, together with a certified statement of the facts involved in the case and its decision thereon:

Now, therefore, pursuant to said order, the United States Customs Court does hereby transmit to said Court of Customs and Patent Appeals the record, evidence, exhibits, and samples in said case, together with a certified statement of the facts involved in the case, and also its decision thereon.

This return specifically comprises the following: A copy of—

1. Protest 989463–G/5106 and memorandum of collector of customs.
2. Stipulation of counsel.
3. The decision in question, Abstract 47420, and judgment.
4. Motion for rehearing, memorandum in opposition thereto, and order denying rehearing.

The entry papers will be forwarded later.

Witness, The Honorable Presiding Judge of the United States Customs Court, this 8th day of December, A. D. 1942.

[SEAL] P. S. DEMARCO,
Acting Clerk.

Rum from Cuba.

PROTEST NO. 989463–G/5106

New York, Mar. 9, 1939.

HON. COLLECTOR OF CUSTOMS,
Port of New York.

SIR: Notice of dissatisfaction is hereby given with, and protest is hereby made against, your ascertainment and liquidation of duty or tax and your decision assessing duty or tax at $2.25 per proof or wine gal. under the Revenue Act of 1938, and/or your decision assessing duty at $2.50 per proof or wine gal. less 20% under Schedule II (Tar-

iff Act of 1930, Par. 802) of the Cuban Trade Agreement (T. D. 47232 by virtue of T. D. 47667, on certain imported rum.

It is claimed that your assessment of $2.25 per proof or wine gal. under the Revenue Act of 1938 is in fact and in law a customs duty. It is further claimed pursuant to Article III of the Cuban Trade Agreement (T. D. 47232) that the merchandise is not chargeable with said $2.25 per proof or wine gal. duty.

It is claimed that the merchandise is only dutiable at the rate of $2 per proof or wine gal. under Schedule II of said Cuban Trade Agreement or said Agreement by virtue of T. D. 47667, and is not chargeable with any other tax or duty.

It is alternatively claimed that said merchandise is only dutiable at $2.50 per proof or wine gal. less 20% (the minimum preferential reduction to Cuba) under Schedule II (Columns I and II) of the Cuban Trade Agreement (T. D. 47232).

It is alternatively claimed that if said merchandise is subject to assessment under the Revenue Act of 1938, it is entitled to a reduction of 20% from the rate therein provided under the provisions of the Amendment of the Tariff Act of 1930 and the Cuban Trade Agreement (T. D. 47232). (See T. D. 48882.)

It is alternatively claimed that the merchandise is only subject to an Internal Revenue tax or duty of $2 per proof or wine gal. under the Liquor Taxing Act of 1934, by virtue of Article VIII of the Cuban Trade Agreement (T. D. 47232).

It is further claimed pursuant to Article III of said Cuban Trade Agreement that the duty or tax must be assessed on the actual number of proof gallons imported.

Each of the above claims is made, and only made, with the proviso and conditionally, that the rate claimed is lower than the rate assessed.

Entry No Bond 74; vessel, *Oriskany;* entered, 7/1/38; liquidated, 2/28/39.

Respectfully,

SCHENLEY IMPORT CORP.,
350 Fifth Ave., N. Y. C.
By PUCKHAFER, RODE & RODE, *Attorneys,*
Attorneys and Counselors at Law,
18 Bridge Street, New York City.

P.

5106. Schenley Import Corp. Cuban Rum-Cuban Tr. Agrt. W. H. 74. Received Mar. 9, 1939. Custom House, New York. Decision reviewed and affirmed. Harry M. Durning, Collector. Per May 5, 1939. 989463 G. Filed May 13, 1939. U. S. Customs Court. J. W. Dale, Clerk.

MEMORANDUM RE PROTEST NO. 5106

MAY 5, 1939.

Received 3/9 1939 (Art. 854 (b) C. R. 1937)

The alcoholic beverages in question are of the kind described in schedule 8 of the Tariff Act of 1930 and in Section 600 of the Revenue Act of 1918, as amended by the Liquor Taxing Act of 1934, which Act became effective January 12, 1934.

Duty was assessed at $2.50 less 20% per proof gallon under paragraph 802 of the Tariff Act of 1930, T. D. 47232–47667, for distilled spirits of the kind described by the Appraiser. Note paragraph 811 of the Tariff Act of 1930, "Each and every gauge or wine gallon of measurement shall be counted as at least one proof gallon."

There was assessed, in addition, a tax of $2.25 per proof gallon to accord with Section 2 of said Liquor Taxing Act, wherein it is provided that such distilled spirits shall be subject to a tax of $2.00 on each proof gallon or wine gallon when below proof and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon.

The protest was received within the statutory time.

Examiner's Initials:

V.

HARRY M. DURNING, *Collector.*
Per F. M. J. DUNNE.

Liquor "A."

989463–G. Filed May 13, 1939. U. S. Customs Court. J. W. Dale, Clerk.

STIPULATION

UNITED STATES CUSTOMS COURT, THIRD DIVISION

Protest No. 989463G/5106 on Int. Rev. Tax

SCHENLEY IMPORT CORP., *Plaintiff*

v.

THE UNITED STATES, *Defendant*

It is hereby stipulated and agreed by and between the parties hereto, subject to the approval of the court, as follows:

1. That the merchandise the subject of the above-entitled protest consists of rum in bottles containing each one gallon or less;

2. That the said rum is the growth, produce, or manufacture of the Republic of Cuba;

3. That the said rum was imported into the United States directly from the Republic of Cuba and entered for warehouse on July 1, 1938;

4. That the said rum was all withdrawn from warehouse on or before July 11, 1938.

It is further stipulated and agreed that the protest be deemed submitted on this stipulation and the plaintiff be allowed 60 days from the date of filing for brief and the defendant be allowed 60 days thereafter for a reply brief.

Dated, New York, June 9, 1941.

PUCKHAFER, RODE & RODE,
Attorneys for Plaintiff.

JOHN D. RODE,
CHARLES D. LAWRENCE,
Acting Assistant Attorney General,
Attorney for Defendant.

By RICHARD E. FITZ GIBBON,
Special Attorney.

Ordered Filed:
GENEVIEVE R. CLINE, *Judge.*

DECISIONS OF THE CUSTOMS COURT

Abstract 47420

UNITED STATES CUSTOMS COURT, THIRD DIVISION

SCHENLEY IMPORT CORP. *v.* UNITED STATES

Protest 989463–G–5106 against the decision of the collector of customs at the port of New York

Decided July 27, 1942

EKWALL, Judge: The importer, the plaintiff in this case, imported certain rum in bottles from Cuba. The bottles were allowed free entry as returned American merchandise. The rum was assessed at the rate of $2.50 per proof gallon less 20 percent under the provisions of paragraph 802 of the tariff act of 1930 as modified by the Cuban Trade Agreement of August 24, 1934 (49 Stat. 3559). The reduction of 20 percent was made because by the terms of the trade agreement between the United States and Haiti effective June 3, 1935, the rate of duty on rum in containers holding each one gallon

or less imported into the United States from Haiti was reduced to $2.50 per proof gallon from which rate Cuba was entitled to a 20 percent preferential.

There was also assessed a tax amounting to $2.25 per proof gallon under the provisions of section 710 of the Revenue Act of 1938.

A number of claims are set forth in the importer's pleadings but in the brief filed on behalf of the importer it is stated that while none of said claims is abandoned reliance is placed on the allegation that the amount of tax assessable under the revenue act of 1938 is $2.00 rather than $2.25 per proof gallon. This claim is made by virtue of article VIII of the Cuban Trade Agreement.

The case was submitted upon a stipulation which is in the following language:

> It is hereby stipulated and agreed by and between the parties hereto, subject to the approval of the court, as follows:
>
> 1. That the merchandise the subject of the above-entitled protest consists of rum in bottles containing each one gallon or less;
>
> 2. That the said rum is the growth, produce, or manufacture of the Republic of Cuba;
>
> 3. That the said rum was imported into the United States directly from the Republic of Cuba and entered for warehouse on July 1, 1938;
>
> 4. That the said rum was all withdrawn from warehouse on or before July 11, 1938.
>
> It is further stipulated and agreed that the protest be deemed submitted on this stipulation and the plaintiff be allowed 60 days from the date of filing for brief and the defendant be allowed 60 days thereafter for a reply brief.

Article VIII, supra, insofar as applicable to the issue here presented, is as follows:

> All articles enumerated and described in Schedule I annexed to this Agreement, with respect to which a rate of duty is specified in Column 2 of the said Schedule, shall be exempt from all taxes, fees, charges, or exactions, in excess of those imposed or required to be imposed by laws of the Republic of Cuba in effect on the day on which this Agreement comes into force; *and all articles enumerated and described in Schedule II annexed to this Agreement, with respect to which a rate of duty is specified in Column 2 of the said Schedule, shall be exempt from all taxes, fees, charges, or exactions, in excess of those imposed or required to be imposed by laws of the United States of America in effect on the day on which this Agreement comes into force.*

On the effective date of the Cuban Trade Agreement here involved, viz, September 3, 1934, the only tax imposed or required to be imposed by the federal laws of the United States of America on rum of the character of that here involved was a tax of $2.00 per proof gallon under the Liquor Taxing Act of 1934 (48 Stat. 313). This tax remained in effect until the passage of the Revenue Act of 1938 (52 Stat. 572) which, in section 710 thereof, increased the tax to $2.25 per proof gallon. This increase became effective July 1, 1938.

The question before us for determination is whether the increased rate of $2.25 imposed by the Revenue Act of 1938, supra, was applicable to the rum here imported.

A statement of the issue discloses that it is precisely the same as that involved in the recent case of *Rathjen Brothers* v. *United States*, decided July 1, 1942, 8 U. S. Cust. Ct., C. D. 659. We there upheld the contention of the plaintiff and held that the internal revenue tax assessable was that levied by the Liquor Taxing Act of 1934, viz, $2.00 per proof gallon. For the reasons expressed in the decision cited and under authority thereof, we sustain the instant protest to that extent.

Judgment will be rendered accordingly.

EKWALL, *J.*

Concurring:
CLINE, *J.*
KEEFE, *J.*

JUDGMENT

UNITED STATES CUSTOMS COURT, THIRD DIVISION

Suit No. 989463–G–5106

SCHENLEY IMPORT CORP., *Plaintiff*

vs.

UNITED STATES, *Defendant*

This case having been duly submitted for decision to the Third Division of the United States Customs Court, and the Court, after due deliberation, having rendered a decision herein; now, in conformity with said decision,

It is hereby ordered, adjudged, and decreed that the protest insofar as it claims that rum imported from Cuba in containers holding each one gallon or less, which was withdrawn from warehouse on or before July 11, 1938, is subject to a tax of $2.00 per proof gallon under the Liquor Taxing Act of 1934, rather than $2.25 per gallon under section 710 of the Revenue Act of 1938, is sustained.

GENEVIEVE R. CLINE,
WILLIAM J. KEEFE,
WM. A. EKWALL,
Judges of the United States Customs Court.

Dated at New York, N. Y., this the 27th day of July 1942.

NOTICE OF MOTION

UNITED STATES CUSTOMS COURT, THIRD DIVISION

Protest 989463–G on Rum from Cuba

SCHENLEY IMPORT CORP., *Plaintiff*

v.

THE UNITED STATES, *Defendant*

Decided July 27, 1942

SIRS: Please take notice, that the undersigned hereby moves this Court for an order vacating and setting aside the decision and judgment herein and for a rehearing upon the grounds more specifically stated in the memorandum of Paul P. Rao, Assistant Attorney General in charge of Customs, annexed hereto and made a part hereof, and for such other and further relief as may be just in the premises.

Yours, etc.,

PAUL P. RAO,
Assistant Attorney General.
CJM

To: CLERK, U. S. CUSTOMS COURT,
New York, N. Y.
COLLECTOR OF CUSTOMS,
New York, N. Y.
PUCKHAFER, RODE & RODE, ESQS.,
18 Bridge Street, New York, N. Y.

MEMORANDUM IN SUPPORT OF MOTION FOR REHEARING

UNITED STATES CUSTOMS COURT, THIRD DIVISION

Protest 989463–G on Rum from Cuba

SCHENLEY IMPORT CORP., *Plaintiff*

v.

THE UNITED STATES, *Defendant*

Decided July 27, 1942

The Government moves for a rehearing in the above entitled action for the reasons hereinafter set forth.

The decision was based upon the court's decision in the case of *Rathjen Bros.* v. *United States*, dated July 1, 1942, 8 Cust. Ct. —, C. D. 659. The Court in its decision in this case stated:

> A statement of the issue discloses that it is precisely the same as that involved in the recent case of *Rathjen Brothers* v. *United States*, decided July 1, 1942, 8 U. S. Cust. Ct. —, C. D. 659. We there upheld the contention of the plaintiff and held that the internal revenue tax assessable was that levied by the Liquor Taxing Act of 1934, viz, $2.00 per proof gallon. For the reasons expressed in the decision cited and under authority thereof, we sustain the instant protest to that extent.

The Government has already filed a motion for a rehearing in the *Rathjen Brothers* case, *supra*.

The grounds upon which the motion here is made are that the Court has apparently improperly construed the language of the Supplementary Trade Agreement with Cuba effective December 23, 1939 (T. D. 50050), in conjunction with and its bearing on the language contained in Article VIII of the Cuban Trade Agreement of August 24, 1934 (T. D. 47232), and further, that the Court's attention was not called to the decision in the case of *Mosle et al.* v. *Bidwell*, 130 Fed. 334, T. D. 25276.

It is argued in the defendant's main brief submitted herein, and in its brief submitted in the *Rathjen Brothers* case, *supra*, that Article III of the supplementary trade agreement with Cuba, *supra*, in amending Article VIII of the trade agreement with Cuba of August 24, 1934, *supra*, removed any doubt as to the interpretation to be given to said Article VIII as to the increase of any internal-revenue tax imposed upon imported merchandise in respect of a like tax on a like domestic article. The court, however, in its decision, held that since the supplementary trade agreement with Cuba, by Article III thereof, amended Article VIII of the former trade agreement with Cuba, that such amendment and such change of language showed a different or new intent. As evidence of such a new intent, the court quoted from "The Analysis of General Provisions and Reciprocal Benefits in the Supplementary Trade Agreement with Cuba." It is respectfully submitted that the quotation above referred to explains the change in language which was necessary not because of any change in intent or treatment but because there was a recognition of "the reasonableness of compensatory charges on imports when like domestic products are subjected to new or increased internal taxes imposed for bona fide revenue purposes."

Defendant respectfully contends that ofttimes subsequent legislation should be read together with prior legislation to show the import of the prior statute. The case at bar is such an instance, as is shown from the language of the Analysis quoted in the court's opinion.

In support of this contention defendant respectfully refers the Court to the case of *Mosle* v. *Bidwell*, *supra*. In that case the court stated (p. 335):

> The plaintiffs contended that the phrase "duties to which it may be subject by law at the time of withdrawal" should be construed to mean "duties no greater nor different than other like goods imported at the time of withdrawal would be subject to." The court held that the goods were subject to duty in the amount exacted of the plaintiffs when they were deposited in bond; that they remained so in the absence of any treaty or statute relieving them from duty; and that neither the treaty nor any statute passed subsequently to the one imposing the duty has impaired or affected the right to collect it.
>
> We need not discuss the several arguments which have been advanced in criticism and in support of this decision. *No principle of statutory construction is better settled than the one which holds that the intention of the Legislature, when discovered, must prevail*, any rule of construction declared by previous acts to the contrary notwithstanding. The following excerpts from *U. S.* v. *Freeman*, 3 How. 556, 11 L. Ed. 724, are apposite to the case at bar:
>
> "A legislative act is to be interpreted according to the intention of the Legislature apparent upon its face. * * * In doubtful cases a court should compare all parts of a statute and *different statutes in pari materia to ascertain the intent of the Legislature.* * * * *If a thing contained in a subsequent statute be within the reason of a former statute, it shall be taken to be within the meaning of that statute; and, if it can be gathered from a subsequent statute in pari materia what meaning the Legislature attached to the words of a former statute, they will amount to a legislative declaration of its meaning, and will govern the construction of the first statute.*"
>
> On December 15, 1902, Congress passed an act (chapter 1, 32 Stat. 753 [U. S. Comp. St. Supp. 1903, p. 255]) amending section 20 of the customs administrative act, quoted above, by inserting before the existing proviso an additional proviso, as follows:
>
> "*Provided*, That the same rate of duty shall be collected thereon as may be imposed by law upon like articles of merchandise imported at the time of withdrawal."
>
> Ordinarily, such an amendment might be taken as indicating an intention to make some change in the existing law, but, although we may not inquire as to what individual members supposed a bill to mean, or what they intended to accomplish by their votes, we may consult the history of the act itself, and the reports of committees having it in charge, in order to reach a conclusion as to legislative intent. It appears that the bill was introduced in consequence of the apprehended results of the decision of the Circuit Court in the case at bar, and the committee on ways and means reported to the House on December 11, 1902, that "the bill simply endeavors to conform the language of the section to the primary meaning and intent of the law and to accord with the custom

and ruling of the Treasury Department." *Under the rule laid down in U. S. v. Freeman, supra, the later statute may be taken as declaratory of the meaning of the earlier one.* [Underscoring ours.]

We therefore respectfully submit that the decision and judgment herein should be vacated and set aside and that the motion for a rehearing should be granted.

Respectfully submitted.

PAUL P. RAO,
Assistant Attorney General.
CJM

CHARLES J. MIVILLE,
Special Attorney.
AUGUST 13TH, 1942.

MEMORANDUM IN OPPOSITION TO MOTION FOR REHEARING

UNITED STATES CUSTOMS COURT, THIRD DIVISION

Protest 989463G. Subject: Rum from Cuba

SCHENLEY IMPORT CORP., *Plaintiff*

v.

THE UNITED STATES, *Defendant*

Decided July 27, 1942

The plaintiff opposes the government's motion for rehearing herein. The government's motion is based on a supposed improper construction of the language of the Supplementary Trade Agreement with Cuba effective December 23, 1939 (T. D. 50050). *This Supplementary Trade Agreement, T. D. 50050, is not involved in the instant case.* The statutes in force at the time of this importation are the statutes to be considered in determining the proper rate of duty applicable to this merchandise. In the presence of clear and explicit enactment, canons of construction have no application. *Godillot & Co.* v. *The United States*, 2 Ct. Cust. Appls. 408, T. D. 32168; *United States* v. *McCord Brady* Co., 8 Ct. Cust. Appls. 208, T. D. 37437; *Allen Steel Co. Inc.* v. *United States*, 16 Ct. Cust. Appls. 26, T. D. 42715; *United States* v. *Littwitz, Inc.*, 18 C. C. P. A. (Customs) 341, T. D. 44588. The language used in Article VIII of the Cuban Trade Agreement of August 24, 1934, T. D. 47232, is clear and unambiguous. Under the circumstances, any reference to the Sup-

plementary Trade Agreement, T. D. 50050 or T. D. 50541, is clearly *obiter dicta* and cannot form any basis for a motion for rehearing.

The case of *Mosle* v. *Bidwell*, 130 Fed. 334, T. D. 25276, which the defendant now cites as authority for its contention is in no way applicable to this case. There is no necessity for resorting to canons of construction. The statute itself furnishes the best means of its own exposition. *Pulaski & Co.* v. *United States*, 6 Ct. Cust. Appls. 291, T. D. 35508. The intent of the lawmaker is the law, and to ascertain that intent courts are bound to have recourse first to the words of the law and, if their meaning be clear and unambiguous, there is no sound reason why that meaning should be rejected and a search made for some signification other than that which has been clearly expressed. *Akawo, Morimuri & Co.* v. *United States*, 6 Ct. Cust. Appls. 379, T. D. 35921.

Even if recourse is properly had to T. D. 50050 and T. D. 50541, the *Mosle* case, *supra*, is not controlling. Where subsequently enacted statutes include certain language, this is a legislative admission that the language of a former statute was not broad enough to include matters thus added. *United States* v. *Wells, Fargo & Co.*, 1 Ct. Cust. Appls. 158, T. D. 31211. A change of meaning is evidenced by a change in language. *Brick & Son* v. *United States*, 2 Ct. Cust. Appls. 26, T. D. 31576; *United States* v. *Brandenstein & Co.*, 17 C. C. P. A. (Customs) 480, T. D. 43941; *Cellas, Inc* v. *United States*, 18 C. C. P. A. (Customs) 237, T. D. 44405. Where a revising act changes the language used in the former act, one is put upon notice that a change in meaning might be intended; no rules of construction are to be resorted to when the meaning is plain. *Stroheim & Romann* v. *United States*, 13 Ct. Cust. Appls. 489, T. D. 41370.

The defendant has not offered to produce any new evidence in the event that its motion for rehearing is granted and has not offered any new argument which would justify the granting of this motion. If the defendant is dissatisfied with the decision, its proper remedy is by appeal.

The instant motion is clearly without merit and for the reasons stated herein, and on all the facts and the law, the motion should be denied.

Respectfully submitted.

PUCKHAFER, RODE & RODE,
Attorneys for Plaintiff.

HOWARD C. CARTER,
Of Counsel.

ORDER

UNITED STATES CUSTOMS COURT, THIRD DIVISION

Port of New York. Protest 989463–G–5106–39

SCHENLEY IMPORT CORP., *Plaintiff*

v.

THE UNITED STATES, *Defendant*

Decided July 27, 1942

Motion having been made by the United States, defendant herein, for a rehearing in the above entitled case, and memorandum in opposition thereto having been filed by Puckhafer, Rode & Rode, attorneys for the plaintiff herein, after due deliberation, it is hereby

Ordered and decreed that the said motion be and the same is hereby denied.

Dated: New York, N. Y., September 15, 1942.

GENEVIEVE R. CLINE,
WILLIAM J. KEEFE,
WM. A. EKWALL,
Judges of the United States Customs Court.

[Indorsed:] Filed December 10, 1942. United States Court of Customs and Patent Appeals. Arthur B. Shelton, Clerk.

U. S. GOVERNMENT PRINTING OFFICE: 1942

[fol. 16] UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

Wednesday, April 21, 1943.

At a session of said court continued and held at the city of Washington, pursuant to adjournment, on this 21st day of April, A. D., 1943.

Present the Honorable Finis J. Garrett, Presiding Judge, and the Honorables Oscar E. Bland, Charles S. Hatfield, Irvine L. Lenroot, and Joseph R. Jackson, Associate Judges.

The court was opened for business in due form.

* * * * * * *

Customs Appeal No. 4418

THE UNITED STATES, Appellant,

v.

RATHJEN BROTHERS, Appellee

Customs Appeal No. 4419

THE UNITED STATES, Appellant,

v.

SCHENLEY IMPORT CORP., Appellee

Said appeals came on to be heard before the court and after hearing the arguments of counsel the causes were taken under advisement by the court.

* * * * * * *

[fol. 17] UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS, OCTOBER TERM, 1942

Customs Appeal No. 4419. Customs Calendar No. 41

THE UNITED STATES, Appellant,

v.

SCHENLEY IMPORT CORP., Appellee

JACKSON, Judge:

This is an appeal from a judgment of the United States Customs Court, Third Division, sustaining a protest by ap-

pellee against the assessment of an internal revenue tax of $2.25 per proof gallon under section 600 (a) of the Revenue Act of 1918 (40 Stat. 1057) as amended by section 710 of the Revenue Act of 1938 (52 Stat. 447), on rum in bottles each containing one gallon or less imported from Cuba into the port of New York and entered for warehouse July 1, 1938.

The rum was assessed with duty at the rate of $2.00 per proof gallon under the provisions of paragraph 802 of the Tariff Act of 1930 as modified by the Cuban Trade Agreement of August 24, 1934, T. D. 47232, and the Haitian Trade Agreement of March 28, 1935, T. D. 47667.

A number of claims were set forth in the protest but according to the decision of the trial court appellee relied there upon the claim that the amount of tax assessable on the imported merchandise under the Revenue Act of 1938 is $2.00 rather than $2.25 per proof gallon as assessed by [fol. 18] the collector. In this court appellee relies entirely upon that claim.

The issue here is identical with that in the case of United States v. Rathjen Brothers, 31 C. C. P. A. (Customs) —, C. A. D. —, decided concurrently herewith. In that case we reversed the judgment appealed from and held that section 710 of the Revenue Act of 1938 was absolutely irreconcilable with the provisions of Article VIII of the Cuban Trade Agreement of August 24, 1934, T. D. 47232. For the reasons therein set out and under the authority thereof the judgment in the instant case must be reversed.

The judgment of the United States Customs Court is reversed.

Reversed.

[fol. 19] UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

Tuesday, July 6, 1943.

At a session of said court continued and held at the city of Washington, pursuant to adjournment, on this 6th day of July, A. D., 1943.

Present the Honorable Finis J. Garrett, Presiding Judge, and the Honorables Oscar E. Bland, Charles S. Hatfield, and Joseph R. Jackson, Associate Judges.

The court was opened for business in due form.

* * * * * * *

Customs Appeal No. 4419

THE UNITED STATES, Appellant,

v.

SCHENLEY IMPORT CORP., Appellee

Said appeal having heretofore been brought on to be heard before the court and due consideration thereon having been had, it is—

Ordered that the judgment of the United States Customs Court be, and the same is hereby, reversed, and it is held that the protest of the importer should be overruled; and said cause is remanded to said court for proper action in the premises.

* * * * * * *

[fol. 20] CERTIFICATE RE MANDATE OF COURT OF CUSTOMS AND PATENT APPEALS

UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

Customs Appeal No. 4419

THE UNITED STATES, Appellant,

v.

SCHENLEY IMPORT CORP., Appellee

The final mandate in the above-entitled appeal, consisting of a certified copy of the order of the court of the 6th day of July, 1943, was issued to the United States Customs Court on the 11th day of August, 1943.

Arthur B. Shelton, Clerk.

[fol. 21] CERTIFICATE OF CLERK

UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

Customs Appeal No. 4419

THE UNITED STATES, Appellant,

v.

SCHENLEY IMPORT CORP., Appellee

I, Arthur B. Shelton, Clerk of the United States Court of Customs and Patent Appeals, do hereby certify that the

attached pages, numbered 1 to 20, inclusive, contain a true and complete transcript of the record and certain proceedings had in said court in the above-entitled appeal, as the same remain of record and on file in this office.

Witness my hand and the seal of this court this 15th day of September, A. D., 1943.

Arthur B. Shelton, Clerk. (Seal.)

(8056)